UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**CV 19-1964-DMG (RAOx)**	Date	February 27, 2020
Title	***Santa Maria City Firefighters Union, IAFF Local 2020, et al. v. City of Santa Maria, et al.***	Page	1 of 5

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS—ORDER RE DEFENDANTS' MOTION TO DISMISS [35]

I.
FACTUAL AND PROCEDURAL BACKGROUND

On December 2, 2019, the Court issued an Order granting in part and denying in part Defendants' first Motion to Dismiss ("MTD 1"). MTD 1 Order [Doc. # 32]. The Order granted the MTD 1 as to the Association's claims for lack of standing,[1] and as to the individual Plaintiffs' claims against the individual Defendants due to qualified immunity, but denied the MTD 1 as to the individual Plaintiffs' *Monell* claim against the City. *Id.* at 14. Plaintiffs filed their First Amended Complaint ("FAC") on December 23, 2019. [Doc. # 33.] The Court incorporates by reference the general factual background that it set out in its MTD 1 Order. MTD 1 Order at 2-3. Defendants filed the instant MTD on January 13, 2020, and it is now fully briefed. MTD [Doc. # 35]; Opp. [Doc. # 38]; Reply [Doc. # 39]. For the reasons set forth below, the Court **GRANTS** the MTD.

II.
DISCUSSION

Defendants move again to dismiss the individual Plaintiffs' claims against the individual Defendants on qualified immunity grounds. They do not challenge the Association's standing to sue. The Court incorporates by reference the general legal standards pertaining to Rule 12 motions to dismiss that it set out in its MTD 1 Order. MTD 1 Order at 4.

[1] Capitalized terms in this Order have the same meaning as that explained in the MTD 1 Order.

A. The Association Lacks Standing to Seek Retrospective Relief

The Court granted Defendants' first MTD against the Association on standing grounds, but Defendants do not raise a similar argument here, even though Plaintiffs made no substantive amendments to their pleading to address the standing deficiencies that the Court identified. *Compare* Compl. at 16 *with* FAC at 17 (identical prayers for relief, neither of which request injunctive relief); *accord* MTD 1 Order at 4–5 (finding that "[t]he Association appears to seek only retrospective monetary relief on behalf of its members[,]" despite listing injunctive relief in caption and footer). But standing is jurisdictional, and a federal court is "required to address the issue . . . even if the parties fail to raise the issue." *United States v. Hays*, 515 U.S. 737, 742 (1995) ("The federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of the jurisdictional doctrines.") (internal quotations and brackets omitted). Accordingly, the Court's analysis in its MTD 1 Order applies to Plaintiffs' allegations in the FAC with respect to the Association, and the Court concludes that the Association lacks associational standing to sue and, absent new factual allegations as to standing, should not have been included as a Plaintiff in the FAC after it had previously been dismissed. MTD 1 Order at 4-5; *see Warth v. Seldin*, 422 U.S. 490, 515–16 (1975).

B. The Individual Defendants are Entitled to Qualified Immunity

Defendants argue, once again, that Plaintiffs cannot overcome the individual Defendants' qualified immunity.[2] As a threshold matter, Plaintiffs contend that the Court should refrain from deciding whether Defendants are entitled to qualified immunity until after the parties have conducted discovery. *See* Opp. at 14. For the reasons stated below, however, the Court can resolve the question of the individual Defendants' qualified immunity "based on the complaint itself[.]" *Groten v. California*, 251 F.3d 844, 851 (9th Cir. 2001).

Qualified immunity "shields federal and state officials from money damages unless a plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." *Kirkpatrick v. Cty. of Washoe*, 792 F.3d 1184, 1193 (9th Cir. 2015) (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731 (2011)). Even though Defendants are the moving party, Plaintiffs bear the burden of "showing that the rights allegedly violated were clearly established." *Shafer v. Cty. of Santa Barbara*, 868 F.3d 1110, 1118 (9th Cir. 2017), *cert. denied sub nom. Shafer v. Padilla*, 138 S. Ct. 2582 (2018).

[2] They also state in passing that the FAC "fails to state plausible facts to support a claim against Hayden and Anderson," but they offer no support for that argument beyond that bare conclusion. The Court therefore understands the MTD to advance only a qualified immunity argument.

While plaintiffs need not cite cases with facts identical to the facts of their case in order to show a violation of a clearly established right, *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018), the right they invoke must be "particularized to the facts of the[ir] case." *White v. Pauly*, 137 S. Ct. 548, 552 (2017) (officer had qualified immunity when the plaintiff "failed to identify a case where an officer acting *under similar circumstances* as [the officer] was held to have violated the Fourth Amendment") (emphasis added). The Ninth Circuit has interpreted this exacting standard to mean that, except in cases of "obvious constitutional misconduct . . . Plaintiffs must point to prior case law that articulates a constitutional rule specific enough to alert these [defendants] *in this case* that *their particular conduct* was unlawful." *Sharp v. Cty. of Orange*, 871 F.3d 901, 911 (9th Cir. 2017); *Isayeva v. Sacramento Sheriff's Dep't*, 872 F.3d 938, 951 (9th Cir. 2017) (holding that in the qualified immunity context, "it is the facts of particular cases that clearly establish what the law is").

Even assuming that Plaintiffs have plausibly stated that the individual Defendants' actions amount to unconstitutional First Amendment retaliation,[3] they have not shown that those actions contravened a clearly established right particularized to the facts of this case. Plaintiffs cite a bevy of authority that stands for the general proposition that "an individual ha[s] a clearly established right to be free of intentional retaliation by government officials based upon that individual's constitutionally protected expression." Opp. at 9 (citing *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1319 (9th Cir. 1989)). But section 1983 plaintiffs cannot overcome qualified immunity by describing violations of clearly established general or abstract rights. *See Kisela*, 138 S. Ct. at 1152 (the Supreme Court has "repeatedly told courts . . . not to define clearly established law at a high level of generality"). Rather, they must show that the existence of the *fact-specific* right they invoke is "beyond debate." *White*, 137 S. Ct. at 551.

Plaintiffs have not identified any cases whose particular facts would have alerted the individual Defendants that their specific conduct in response to Plaintiffs specific speech was clearly unconstitutional. The only case whose facts Plaintiffs discuss in any detail is *Lambert v. Richard*, 59 F.3d 134 (9th Cir. 1995). There, a public library employee appeared at a public city council meeting and publicly criticized the library director's performance. *Id.* at 135. In response, the library director issued the employee a "letter of reprimand" for "insubordinate action," and placed the letter in her permanent "personnel file." *Id.* at 135-36. After the

[3] In its MTD 1 Order, the Court found that Plaintiffs plausibly alleged that their speech related to a matter of public concern. Defendants' MTD does not seem to argue otherwise. *See* Reply at 5 ("the [MTD] is based upon the second prong of the [qualified immunity] test"). Because that issue does not appear to be in dispute, the Court assumes that Plaintiffs' speech was on a matter of public concern for the same reasons stated in the Order dismissing Plaintiffs' original Complaint.

employee sued for unconstitutional retaliation for protected speech, the Ninth Circuit ruled that the director did not enjoy qualified immunity because the employee's statements were "clearly" publicly made and addressed a public concern. *Id.* at 137. Plaintiffs do not address the material factual differences between *Lambert* and this case. Where the *Lambert* employee's speech was "clearly" public, the Court has already determined that Plaintiffs' speech was not. MTD 1 Order at 8. Moreover, the director in *Lambert* did not merely investigate the employee—he issued a formal reprimand that would have permanently marred the employee's personnel file had she not taken legal action. As discussed in the MTD 1 Order, Plaintiffs did not endure any formal punishment as a result of the individual Defendants' actions. While both *Lambert* and this case concern the general right to be free from adverse employment action in response to protected speech, the factual circumstances that underlie the cases are not similar enough for *Lambert* to have clearly established the law pertaining to this case. *Sharp*, 871 F.3d at 911 ("Plaintiffs must point to prior case law that articulates a constitutional rule specific enough to alert these [defendants] *in this case* that *their particular conduct* was unlawful.").

Another case that Plaintiffs cite, but do not discuss in any detail, *Coszalter v. City of Salem*, states in *dicta* that an "unwarranted disciplinary investigation" or "a threat of disciplinary action" *may* constitute adverse employment action. 320 F.3d 968, 976-77 (9th Cir. 2003). But the adverse employment action in *Coszalter* included a *criminal* investigation, accusations that the plaintiffs committed assault, a suspension without pay, and either termination or forced resignation. *Id.* at 971–72. While the court stated that a disciplinary investigation was "perhaps" a qualifying adverse employment action, the court did not describe any factual scenarios in which such an investigation would or would not qualify. Because the court's statement is vague and made in *dicta*, it is not enough to clearly establish that the individual Defendants' particular conduct in this case violated a constitutional right. *Reichle v. Howards*, 566 U.S. 658, 664 (2012) ("[E]xisting precedent must have placed the . . . question beyond debate.") (citation and internal quotation marks omitted).

Additionally, Plaintiffs cite *Eng v. Cooley*, 552 F.3d 1062, 1076 (9th Cir. 2009), to argue that this case involves the "mere application of settled law to a new factual permutation." Opp. at 12. But to the extent that Plaintiffs suggest that *Eng* stands for the proposition that courts may apply general, well-established, legal standards to cases involving disparate factual circumstances to deny state officials qualified immunity, the Supreme Court has rejected that approach and the Ninth Circuit has followed suit in the years after *Eng*. *Kisela*, 138 S.Ct. at 1152 ("This Court has repeatedly told courts—and the Ninth Circuit in particular—not to define clearly established law at a high level of generality.") (internal quotations omitted); *Isayeva*, 872

F.3d 938, 951 (9th Cir. 2017) ("it is the facts of particular cases that clearly establish what the law is"). Plaintiffs' argument based on *Eng* is therefore unpersuasive.

In sum, regardless of whether Plaintiffs have demonstrated that the individual Defendants' conduct violated the First Amendment right to freedom from retaliation for protected speech, Plaintiffs have not identified preexisting precedent clearly establishing that a reasonable official in the individual Defendants' shoes would have known that their particular conduct was unlawful. Qualified immunity therefore shields the individual Defendants from liability under the circumstances of this case.

III.
CONCLUSION

In light of the foregoing, the Court **DISMISSES** the Association's claims for lack of standing. Additionally, because Plaintiffs have not met their burden of showing that the individual Defendants violated a clearly established constitutional right, the Court **GRANTS** the MTD as to the individual Defendants on qualified immunity grounds. Because Plaintiffs have now had multiple opportunities to allege facts and identify precedent sufficient to surmount qualified immunity, and have failed to do so, further leave to amend would be futile. *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009) (a district court may deny leave to amend if it "determines that the pleading could not possibly be cured by the allegation of other facts."). Leave to amend is therefore **DENIED** and the individual Defendants (*i.e.*, Defendants Leonard Champion, Jayne Anderson, and Rick Hayden) are **DISMISSED, with prejudice,** from this action. Defendant City of Santa Maria shall file its Answer to the FAC by **March 19, 2020**.

IT IS SO ORDERED.